CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	$\overline{\mathbf{V}}$	Discourt.	U.S.
Jenzo Duque		Squad #8	201900253	v	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:	l	P	recinct:	18	Mo. SOL	EO SOL
Saturday, 01/05/2019 1:30 AM					76	7	7/5/2020	2/19/2021
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CC	RB
Wed, 01/09/2019 3:39 PM		CCRB	Phone		Wed, 01/0	9/201	19 3:39 PM	I
Complainant/Victim	Туре	Home Addre	ess					
Witness(es) Home Address								
Subject Officer(s)	Shield	TaxID	Command					
1. POM Felix Rosa	14543	953339	076 PCT					
2. POM Andrew Zeni	03755	961472	076 PCT					
3. An officer			076 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. SGT Elio Ponzo	04140	944904	076 PCT					
2. POM Man Lee	05570	956833	076 PCT					
Officer(s)	Allegatio	on			Inve	estiga	ator Recor	nmendation
A.POM Andrew Zeni	Officer A	at Hamilton Avenue and Andrew Zeni stopped the as an occupant.						
B.POM Felix Rosa		esy: At Hamilton Avenu Telix Rosa spoke discour		, Po	lice			
C.POM Felix Rosa	Abuse: At Hamilton Avenue and Clinton Street, Police Officer Felix Rosa searched the vehicle in which \$\sec{8}{15}(2)\$ was an occupant.							
D.POM Andrew Zeni		at the 76th Precinct station Zeni seized ^{§ 87(2)(b)}	onhouse, Police Offi s property.	cer				
E. An officer	Abuse: A	an officer damaged § 87(2)	s property.					
F. An officer		an officer searched the vas an occupant.	ehicle in which \$87(2)					

Case Summary

filed this complaint with the CCRB via phone on January 9, 2019. On January 5, 2019, at approximately 1:30 a.m., at Hamilton Avenue and Clinton Street in Brooklyn, Police Officer Andrew Zeni of the 76th Precinct stopped (\$\sqrt{97(2)(b)}\) vehicle for tinted windows (Allegation A: Abuse of Authority, \$87(2)(g) PO Zeni's partner, Police Officer Felix Rosa of the 76th Precinct, then requested \$87(2)(b) license and registration. \$87(2)(b) opened his wallet and removed his documents, exposing an NYPD pendant. PO Rosa allegedly that the NYPD pendant, "Don't mean shit," and that \$87(2)(5) believed he could "get away with murder" for having such "bullshit" (Allegation: B: Discourtesy - Word, The officers reviewed \$87(2)(b) license for warrants and upon discovering he had an open warrant, arrested him. §87(2)(b) denied having open warrants and stated he had paperwork proving such inside his vehicle to the officers. PO Rosa then searched §87(2)(b) vehicle for the paperwork (Allegation C: Abuse of Authority, \$87(2)(g) Sergeant Elio Ponzo of the 76th Precinct responded to the scene and upon determining § 87(2)(b) vehicle was a manual transmission, drove it to the 76th Precinct stationhouse. PO Rosa and PO Zeni transported §87(2)(b) to the 76th Precinct stationhouse, processed his arrest, and lodged him in the prisoner holding pen. PO Zeni then returned \$87(2)(6) him, stating that he removed the NYPD pendant to be vouchered. Upon \$87(2)(6) release from Brooklyn Central Booking, he returned to the 76th Precinct stationhouse and retrieved his property using Property Invoice #8 87(2)(b) The NYPD pendant was not among the items returned to him. (Allegation D: Abuse of Authority, §87(2)(g) § 87(2)(b) also retrieved his vehicle, and he observed the center console door was broken, the emergency break did not function, and the rear exterior of his vehicle had been scratched. § 87(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Allegations E-F: Abuse of Authority, \$87(2)(g) There were four body-worn camera videos available for this incident, from the following MOS: PO Zeni, PO Rosa, Sgt. Ponzo, and Police Office Man Lee of the 76th Precinct (Board Review 01-04). **Findings and Recommendations** Allegation (A) Abuse of Authority: Police Officer Andrew Zeni stopped the vehicle in which was an occupant. It is undisputed that PO Zeni stopped the vehicle in which \$87(2)[6] was an occupant. testified that PO Zeni stopped his vehicle, a Nissan 350 Z with tinted windows, as he completed a left turn onto northbound Hamilton Avenue (Board Review 05). It is further undisputed that \$87(2)(b) vehicle had tinted windows, including the front windshield and rear windshield. PO Zeni and PO Rosa both stated that they observed \$37(2)(5) vehicle had

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tinted windows, and that PO Zeni stopped his vehicle because of such (Board Review 06) (Board Review 07). Furthermore, PO Zeni's body-worn camera footage captured the officers testing windows for their tint gradient, which was approximately 40 percent (Board Review 08).

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)
New York Vehicle and Traffic Law § 375 12-a Subsection B-2 (Board Review 09) states, "No person shall operate any motor vehicle upon any public highway, road or street[with] sidewings or side windows of whichare composed of, covered by or treated with any material which has a light transmittance of less than seventy percent."
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Allegation (B) Discourtesy - Word: Police Officer Felix Rosa spoke discourteously to 887(2)(b)
testified that after PO Zeni stopped his vehicle, PO Rosa requested solutions is license and registration. \$87(2)(b) opened his wallet and removed his documents, exposing an NYPD pendant and a PBA card in the process. PO Rosa told \$87(2)(b) that the NYPD pendant, "Don't mean shit," and that \$87(2)(b) believed he could "get away with murder" for having such "bullshit." \$87(2)(b).\$87(2)(g)
PO Rosa denied directing profanity at \$87(2)(b) (Board Review 07), and while both Sgt. Ponzo and PO Zeni did not recall if PO Rosa did so (Board Review 10) (Board review 06), PO Rosa's body-worn camera video footage did not capture PO Rosa speaking discourteously to at any point during the incident (Board Review 01).
Allegation (C) Abuse of Authority: Police Officer Felix Rosa searched the vehicle in which
was an occupant. It is undisputed that PO Rosa searched the vehicle in which \$87(2)(b) was an
It is undisputed that PO Rosa searched the vehicle in which \$87(2)(b) was an occupant.
testified that after he provided his documentation to PO Rosa, the officers
reviewed it, stating that he was under arrest for an open warrant (Board Review 05). \$87(2)(b)
denied having any open warrants as they handcuffed him, and the officers placed him in the rear
of their vehicle. PO Rosa then leaned into the driver's seat of \$87(2)(b) vehicle. \$87(2)(b)
assumed PO Rosa was searching for paperwork beside the driver's seat. From his vantage point,
could not see if PO Rosa removed anything from inside his vehicle. PO Rosa and PO
Zeni corroborated that \$87(2)(b) denied having any open warrants (Board Review 07) (Board Review 06); however, they both testified that \$87(2)(b) told the officers to search inside his
Review 06); however, they both testified that \$87(2)(b) told the officers to search inside his vehicle for paperwork exonerating him of warrants. PO Rosa and PO Zeni both stated that they
searched inside \$87(2)(b) vehicle in a limited capacity, in the locations specified by \$87(2)(b)

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and did not recover said paperwork. While PO Zeni testified that both he and PO Rosa searched vehicle, and PO Rosa did not recall if any officer other than himself searched the vehicle, body-worn camera video footage captured that only PO Rosa did so and that his search was limited in capacity to the aforementioned paperwork (Board Review 11). PO Rosas body-worn camera video footage also captured the exact exchange between PO Rosa and \$87(2)(b) regarding searching \$87(2)(b) vehicle (Board Review 12). PO Rosa states has an open warrant for an unpaid ticket, to which \$87(2)(b) responds, "I don't have
any warrants—I have the paperwork in the car." PO Rosa then asks \$\frac{37(2)(b)}{2}\$ where the paperwork is in his vehicle and \$\frac{37(2)(b)}{2}\$ reiterates it is inside the vehicle. PO Rosa states he will put \$\frac{37(2)(b)}{2}\$ in his police vehicle and search inside the vehicle. PO Rosa asks \$\frac{37(2)(b)}{2}\$ again where specifically the paperwork is in his vehicle and \$\frac{37(2)(b)}{2}\$ responds, "Right there, near the seat." PO Rosa continues to question \$\frac{37(2)(b)}{2}\$ about the open warrant for approximately 40 seconds. PO Rosa then tells \$\frac{37(2)(b)}{2}\$ he will review the paperwork inside \$\frac{37(2)(b)}{2}\$ vehicle, confirm that his warrant is not active, and then ultimately release him with a summons if such is the case. PO Rosa and \$\frac{37(2)(b)}{2}\$ does not object to PO Rosa searching his
vehicle at any point in time. People v. Hall, 2006 NY Slip Op 9751, 35 A.D.3d 1171, 828 N.Y.S.2d 740 (App. Div.) (Board Review 13) ruled, "The standard for measuring the scope of a suspect's consent [to search a vehicle] under the Fourth Amendment is that of "objective" reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?'[Furthermore,] the People have a heavy burden of establishing that a suspect voluntarily consented to a search and that the search did not exceed the scope of the consent." 87(2)(5). § 87(2)(2)
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Allegation (D) Abuse of Authority: At the 76 th Precinct stationhouse, Police Officer Andrew Zeni seized sor(2)(b) sproperty. Whether PO Zeni seized sor(2)(b) property remains in dispute. Solve testified that in the prisoner holding pen of the 76 th Precinct stationhouse, PO
Zeni gave \$87(2)(6) his wallet back while stating that he had removed the NYPD pendant from it (Board Review 05). PO Zeni did not offer any explanation to \$87(2)(6) for having removed the NYPD pendant from \$87(2)(6) wallet. Upon his release from Brooklyn Central Booking, Page 4

testified that he did not encounter his vehicle until after he was released from Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. 597(2)(b) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. 597(2)(b) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. 597(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released (597(2)(b) vehicle at the stationhouse. Sgt. Ponzo's body-worn camera video footage corroborated the reason he transported vehicle and did not capture him searching or damaging it (Board Review 14). However, Sgt. Ponzo's body-worn camera video footage ended before he arrived at the stationhouse and released (597(2)(b) s 57(2)(b) s 57(2)(c) S57(2)(b) s 57(2)(c) However,
Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. ST(2)(6) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. ST(2)(6) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. ST(2)(6) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of ST(2)(6) vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released ST(2)(6) vehicle at the stationhouse. Sgt. Ponzo's body-worn camera video footage corroborated the reason he transported vehicle and did not capture him searching or damaging it (Board Review 14). However, Sgt. Ponzo's body-worn camera video footage ended before he arrived at the stationhouse and released ST(2)(6) s vehicle to other officers.
Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. Station observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. Station denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. Station also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of street vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released station vehicle at the stationhouse. Sgt. Ponzo's body-worn camera video footage corroborated the reason he transported vehicle and did not capture him searching or damaging it (Board Review 14). However, Sgt. Ponzo's body-worn camera video footage ended before he arrived at the stationhouse and released vehicle to other officers.
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Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. Str(2)(b) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. Str(2)(b) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. Str(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of str(2)(b) vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released str(2)(b) vehicle at the stationhouse. Sgt. Ponzo's body-worn camera video footage corroborated the reason he transported vehicle and did not capture him searching or damaging it (Board Review 14). However, Sgt. Ponzo's body-worn camera video footage ended before he arrived at the stationhouse and
Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. St7(2)(b) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. St7(2)(b) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. St7(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of St7(2)(b) vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released St7(2)(b) vehicle at the stationhouse. Sgt. Ponzo's body-worn camera video footage corroborated the reason he transported St7(2)(c) vehicle and did not capture him searching or damaging it (Board Review 14). However,
Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. Str(2)(b) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. Str(2)(b) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. Str(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of Str(2)(b) vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released Str(2)(b) vehicle at the stationhouse. Sgt. Ponzo's body-worn camera video footage corroborated the reason he transported Str(2)
Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. Str(2)(b) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. Str(2)(b) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. Str(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of vehicle was in fair to worn condition at the time of the stop (Board Review 07) (Board Review 06) (Board Review 10). Sgt. Ponzo denied searching inside the vehicle in any capacity and he denied damaging it while in transit to the stationhouse. Sgt. Ponzo did not recall to whom he released (Str(2)(b)) vehicle at the stationhouse.
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Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property. S87(2)(b) observed the center console door was broken, the emergency break did not work, and the rear exterior of his vehicle had been scratched. S87(2)(b) denied any of the damage existing prior to the incident, but had no documentation of the vehicle's condition prior to or after the incident. S87(2)(b) also observed boxes of paperwork and a spare tire strewn about in the hatchback of his vehicle, and concluded it had been searched (Board Review 05). PO Rosa, PO Zeni, and Sgt. Ponzo consistently testified that Sgt. Ponzo transported period vehicle from the scene to the stationhouse because it was a manual transmission, and that the interior of S87(2)(b) vehicle was in fair to worn condition at the time of the stop (Board
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Brooklyn Central Booking and returned to the 76 th Precinct stationhouse to retrieve his property.
188(2)(b) testified that he did not encounter his vehicle lintil after he was released from
<u>was an occupant.</u> § 87(2)(b), § 87(2)(g)
Allegation (F) Abuse of Authority: An officer searched the vehicle in which was an occupant
Allegation (E) Abuse of Authority: An officer damaged \$87(2)(b) property.
§ 87(2)(b), § 87(2)(g)
released back into \$87(2)(b) custody.
nor the copy of the invoice provided by the NYPD lists \$87(2)(b) property as being
were vouchered with \$87(2)(b) consent. However, neither the copy of the invoice provided by
of the invoice states that on the incident date at approximately 3:50 a.m., the above listed items
button" was vouchered among \$87(2)(b) general property for safekeeping. The remarks section
time. PO Zeni denied seizing \$87(2)(b) s property. According to Property Invoice #887(2)(b) (Board Review 15), one, "metal pinback
told \$87(2)(b) he would voucher the pin and that \$87(2)(b) could retrieve it at a later point in
could not accompany \$87(2)(b) to Brooklyn Central Booking, as it was made of metal. PO Zeni
upon his release from police custody. PO Zeni also informed \$87(2)(b) that the pin in his wallet
informed § 87(2)(b) that his property would be vouchered and that he could retrieve said property
property in the prisoner holding pen (Board Review 06). PO Zeni testified that he informed \$87(2)(0) that his property would be vouchered and that he could retrieve said property
Review 07) (Board Review 10), PO Zeni corroborated that he and property in the prisoner holding pen (Board Review 06). PO Zeni testified that he informed 87(2)(6) that his property would be vouchered and that he could retrieve said property
and they both denied witnessing PO Zeni seize an NYPD pendant from [897(2)(b)] (Board Review 07) (Board Review 10), PO Zeni corroborated that he and [897(2)(b)] discussed [897(2)(b)] property in the prisoner holding pen (Board Review 06). PO Zeni testified that he
Ponzo consistently testified they had no knowledge of \$87(2)(6) possessing an NYPD pendant, and they both denied witnessing PO Zeni seize an NYPD pendant from \$87(2)(6) (Board Review 07) (Board Review 10), PO Zeni corroborated that he and \$87(2)(6) discussed \$32(2) property in the prisoner holding pen (Board Review 06). PO Zeni testified that he
and they both denied witnessing PO Zeni seize an NYPD pendant from [897(2)(b)] (Board Review 07) (Board Review 10), PO Zeni corroborated that he and [897(2)(b)] discussed [897(2)(b)] property in the prisoner holding pen (Board Review 06). PO Zeni testified that he

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conducted further note no missing	an invoicing inspection, review es that the interior and exterior or damaged parts yielded from	for save vehicle (Board Reving the trunk and glove compartme condition of the vehicle was poor, at the inspection.	nt. The inspection
§ 87(2)(b), §	87(2)(g)		
	Civilian and	Officer CCRB Histories	
 § 87(2) 	<u>Civinan anu</u> ^{2)(b)}	Officer CCRB Histories	
	<i>~</i>		
• PO	mplaint to which he has been a so Rosa has been a member of se	service for three years and this is subject. rvice for six years and has been a sul none of which were substantiated.	oject in two CCRB
CC		of service for 11 years and has been ations, five of which were not subsect. § 87(2)(g)	
As of of Ac	is complaint was not suitable fo	ity Office of the Comptroller has no ant (Board Review 18). Administration (OCA), \$87(2)(b)	record of a notice
Squad No.:			
Investigato	.r.		
III Congato	Signature	Print Title & Name	Date
Squad Lead	der:		
1	Signature	Print Title & Name	Date
Reviewer:			

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Signature

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